

MANDATE

**United States Court of Appeals
For the First Circuit**

05-10618
USDCMA
Judge Lindsay

No. 06-1384

RAUL P. GONSALVES,
Petitioner, Appellant,

v.

MICHAEL A. THOMPSON,
Respondent, Appellee.

Before

Torruella, Circuit Judge,
Stahl, Senior Circuit Judge,
and Howard, Circuit Judge.

JUDGMENT

Entered: May 23, 2008

Petitioner Raul Gonsalves appeals the district court's denial of his motion to reopen his habeas case and proceed on his exhausted claims. The district court granted a certificate of appealability ("COA") on the issue of whether petitioner had demonstrated excusable neglect, pursuant to Fed. R. Civ. P. 60(b)(1), for his failure to respond to a conditional dismissal order of the court. The applicable factors and principles articulated in Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. Partnership, 507 U.S. 380 (1993) support the conclusion that petitioner has indeed shown that any neglect in failing to respond to the district court's October 24, 2005 Order was excusable. Petitioner maintains that he did not receive the court's October 24th Order, most likely because it was not sent to the new address, of which petitioner notified the court in an October 31, 2005 letter. We note the presence in the record of petitioner's October 31, 2005 change of address letter, which is file stamped by the district court but does not appear on the docket sheet and was not otherwise acknowledged by the district court.

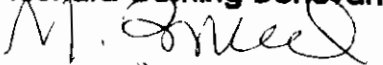
Further, because the district court's September 27, 2007 COA order was limited to the excusable neglect issue, and conceded that petitioner "posited a sound reason, pursuant to Fed. R. Civ. P. 60, justifying relief from the judgment entered against him," we deem it unnecessary for the district court to evaluate the excusable neglect issue pursuant to Pioneer. Rather, it is most expeditious to simply vacate the denial of the Rule 60(b) motion and remand to allow the district court to evaluate petitioner's two exhausted habeas claims on the merits.
So Ordered.

By the Court:

Entered and Issued as Mandate
under Fed. R. App. P. 41.

/s/ Richard Cushing Donovan, Clerk.

Richard Cushing Donovan, Clerk


Deputy Clerk

Date: 6/16/08

[cc: Raul Gonsalves, Eva Badway]